THE HONOURABLE SRI JUSTICE V. ESWARAIAH

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WRIT PETITION NO.27773 OF 2005

DATED: 28-12-2005

BETWEEN:

Smt.S. Adilakshmi … Petitioner

And

The Collector, Ananthapur District

And three others … Respondents

THE HONOURABLE SRI JUSTICE V. ESWARAIAH

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WRIT PETITION NO.27773 OF 2005

ORDER:

The petitioner is a fair price shop dealer in respect of Kolugodu village, Gummagatta Mandal, Anantapur District. The petitioner stated that she was appointed as a dealer of fair price shop to distribute the essential commodities on permanent basis. While so, the 3rd respondent suspended her dealership basing on the report of the 4th respondent without following the due procedure. Against which the petitioner filed an appeal before the Joint Collector, Anantapur and the Joint Collector by his order dated 02-12-2004 while granting stay of the suspension order, remanded the matter to the Revenue Divisional Officer for disposal of the case as expeditiously as possible. After the said orders, the third respondent issued a show cause notice dated 30-12-2004 making as many as five charges. It is stated that against the said show cause notice dated 30-12-2004, the petitioner appears to have been filed Writ Petition No.25191/2004 and thereafter

a representation dated 09-01-2005 and another explanation dated 19-01-2005 were made. It appears that this Court in the said Writ Petition No.25191/2004 passed the orders on 30-12-2004 directing the Revenue Divisional Officer to proceed with further action, only, after giving a show cause notice. As the show cause notice was

already issued on 30-12-2004 and the petitioner also filed representation and explanation, the explanations have been considered and all the contents raised in the explanation have been discussed and findings have been recorded by the Revenue Divisional Officer. In so far as charge No.1, it is held that the petitioner misused 28 quintals of food for work rice for his personal gain. So far as charge No.2 is concerned, it is held that the petitioner has not distributed the AAY rice as per the quota to the card holders and issued 25 kgs of AAY rice, instead of 35 kgs, which is not proved, but in so far as charge No.3 is concerned, it is held that the petitioner found selling kerosene for higher rate of Rs. 0.50 paise per litre which is a grave irregularity. In so far as charge No.4 is concerned, it was held that the petitioner refused to give rice for the named five card holders @ 10 kgs on the ground that there was no stock though sufficient stock was clearly available. In so far as charge No.5 is concerned, it is held that the petitioner has misused 500 litres of kerosene oil. Out of five charges, four charges were proved and after considering the petitioner's case, it is found that the petitioner has committed grave irregularity in distributing essential commodities and intended to distribute the same at higher rates and also misused 28 quintals of food for work rice and kerosene. Hence, fair price shop dealership of the petitioner was cancelled by the Revenue Divisional Officer by his order dated

03-06-2005. Against the said order, petitioner filed an appeal before the Joint Collector, Anantapur and the Joint Collector while dealing with all the contentions with regard to every charge, confirmed the cancellation order by his order dated 06-12-2005. It is stated that as against the said order, petitioner filed a revision on 24-12-2005 questioning the order of the appellate authority. The petitioner has not even questioned the order of the appellate authority in this writ petition, as the impugned order of the third respondent has been merged in the order of the appellate authority in RC.R/4/V No.358/05 dated 15-12-2005/Joint Collector, Ananthapur. Therefore, I am of the opinion that the prayer in the writ petition is misconceived and questioning the order of the Revisional authority, which has been merged with Appellate Authority, is not permissible, without questioning the order of the Appellate Authority.

Learned counsel appearing for the petitioner relied on the judgment of this court in "***K. RADHA KRISHNA NAIDU v. DIRECTOR OF CIVIL SUPPLIES, HYDERABAD AND OTHERS*** wherein this court while considering the effect of the Clause 28 of Andhra Pradesh Petrolium Products (Lincensing and Regulation of

Supplies) Order, 1980 held that as per the proviso in Clause 28 of the said order, unless the licensee or the holder of registration certificate has been given a reasonable opportunity for representing his case in writing and also having heard in person against the proposed cancellation, the licence cannot be cancelled. It was further held that the necessary material which was made as a base for issuing the show cause notice would form part of the fundamental requirement of reasonable opportunity. Without furnishing such a document, asking the explanation of the petitioner would be nothing but empty ritual. Whereas the relevant clause authorizing the appellate authority to cancel or suspend the FPS dealership is under Clause 5(4) of the A.P. State Public Distribution System Control Order, 2001, which reads as follows:

Clause 5(4): The appointing authority may at any time whether at the request of the authorized fair price shop or authorized establishment or suo motu after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, add to, amend, vary, suspend or cancel the authorization issued or deemed to be issued to him.

Though there is no specific provision to give reasonable opportunity, but principles of natural justice had applied.

Therefore, in the instant case show cause notice claimed as many as five charges have been framed giving particulars and specific irregularities calling upon the petitioner to file his explanation and accordingly petitioner filed his explanation. Unless the petitioner makes a request to issue the copy of the report basing on which the show cause notice is issued, he cannot be furnished the copy of enquiry report. However, in the instant case, neither the copy of the explanation nor the original orders canceling the fair price shop dealership and the original order of the appellate authority has been filed, but only typed copies have been filed. In view of the aforesaid circumstances, I am of the opinion that the order as contemplated under clause 28 of A.P. Petroleum Order is different and it has been from that of the enquiry as contemplated under Clause 5(4) of the A.P. State Public Distribution System Control Order, 2001 wherein it was held that the appointing authority shall make enquiry and pass orders by recording the reasons. In the instant case, reasons have been recorded in the cancellation order after following the principles of natural justice. Therefore, I am of the opinion that the said judgment may not identical to the case of the petitioner.

Learned counsel for the petitioner relied on another judgment of this court in ***M. SADASIVA SEKHAR v. DISTRICT COLLECTOR, KURNOOL AND OTHERS*** and that was the case arose after passing the final orders by the divisional authority. In the said case, the order of the appointing authority, appellate authority and the revisional authority were all questioned. In that case also, it was held that if any specific request has been made for giving reasonable opportunity as against the allegations, a reasonable opportunity of personal hearing in a particular manner and it is for them to give an oral hearing in a given case, but not in every case. As in that case, such an opportunity was not given causing prejudice to the dealer therein and the orders passed by the Revisional authority-Joint Collector and the Revenue Divisional Officer were set aside remitting the matter to the R.D.O. But, in the instant case, the petitioner was not challenged the appeal order and the revision was pending before the District Collector. Therefore, it is not open to the petitioner to pursue the parallel proceedings.

Accordingly, the writ petition is dismissed. However, the District Collector, Ananthapur (Revisional Authority) is directed to dispose of the appeal, if any, filed and is pending in accordance with law by giving reasonable opportunity to the petitioner within four weeks from the date of receipt of this order. No costs.

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V. ESWARAIAH, J.

Dated: 28-12-2005

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